

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Metro Networks Communications, Inc.)	File No. EB-04-SE-017
)	
Houston, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: February 9, 2005**Released:** February 11, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Memorandum Opinion and Order (“Order”), we dismiss as moot a Petition for Partial Revocation filed by New Inspiration Broadcasting Company, Inc. (“NIBC”) of a permit issued to Metro Networks Communications, Inc. (“Metro”) pursuant to Section 325(c) of the Communications Act of 1934 (“Act”), as amended.¹ In addition, we find that Metro’s transmittal of information to a Mexican AM broadcast station via textual emails did not come within the scope, and thus did not violate the terms and conditions, of its Section 325(c) permit.

2. Under Section 325(c) of the Act, the transmission or delivery of broadcast programming from a facility in the United States to a foreign broadcast station, which will be received in the United States, requires an application to and permit granted by the Commission. On January 12, 2000, Metro filed with the Commission an application for renewal of its Section 325(c) permit to supply programming information to 23 broadcast stations located in Mexico, including Station XEMO, 860 MHz, Tijuana, Mexico. On February 29, 2000, the Commission’s International Bureau granted Metro’s renewal application.² The Section 325(c) permit, which authorizes Metro to deliver programming “consisting of self-contained broadcasts of local, regional and/or national news,” is expressly conditioned upon the Mexican stations “operation in full compliance with applicable treaties and related provisions concerning electrical interference to U.S. broadcast stations.”

3. On December 11, 2003, NIBC, licensee of Station KLRA (AM) Glendale, California, filed a Petition for Partial Revocation (“Petition”) of Metro’s Section 325(c) permit, to the extent that it authorizes Metro to transmit programming to Station XEMO. NIBC maintained, and provided engineering and technical supporting documentation to demonstrate, that Station XEMO had been operating at increased power levels from a new site, and that such operations was causing prohibited interference to Station KRLA(AM). NIBC further maintained that Station XEMO’s operations were not coordinated under, and thus did not comply with, the 1986 Agreement between the Government of the United States of America and the Government of the United Mexican States Relating to the AM

¹47 U.S.C. § 325(c)

²See File No. 325-NEW-20000112-0001 (granted February 29, 2000) (“Section 325(c) permit”).

Broadcasting Service in the Medium Frequency Band (“U.S.-Mexican Agreement”).³

4. In response to the Petition, the Bureau issued a Letter of Inquiry (“LOI”) to Metro. In its response to the LOI, Metro stated that it was unable to independently confirm or deny that Station XEMO’s operations caused interference and did not comply with the US-Mexican Agreement. Metro further noted that Station XEMO informed Metro that representatives of Station XEMO had been in contact with Station KLRA and that Station XEMO believes that the interference issue has been resolved. Moreover, Metro claimed that it has transmitted programming consisting of traffic and border information via textual emails to Station XEMO since 1992, and that such transmissions did not fall within the purview of Section 325(c).

5. In reply, NIBC maintained that Station XEMO continued to cause interference to Station KLRA(AM). NIBC also reiterated its claim that the station’s operations violated the US-Mexican Agreement. On April 8, 2004, Metro supplemented its response and voluntarily withdrew its Section 325(c) permit as it relates to Station XEMO.⁴

6. In light of Metro’s decision to voluntarily withdraw its Section 325(c) permit as it relates to Station XEMO, we find that NIBC’s petition for partial revocation of Metro’s Section 325(c) permit is moot and we accordingly dismiss it.

7. Nevertheless, given that we have previously found that a Section 325(c) permittee violated the terms and conditions of its Section 325(c) permit by providing programming to a foreign station that was not in compliance with applicable treaties concerning interference to U.S. broadcast stations, notwithstanding that the permittee had subsequently tendered its Section 325(c) permit for cancellation,⁵ we turn to the issue of whether Metro violated the terms and conditions of its Section 325(c) permit. Section 325(c) provides:

No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefore.

8. In interpreting statutory language, the Supreme Court has directed that when the words of

³It should be noted that the Spectrum Enforcement Division of the Enforcement Bureau found in another case that Station XEMO’s operations violated the U.S.-Mexican Agreement, and caused harmful interference to Station KRLA(AM). See *Uniradio Corp.*, 19 FCC Rcd 19933 (Enf. Bur., Spectrum Enf. Div., 2004) (proposing a \$25,000 forfeiture against a Section 325(c) permittee for providing programming to Station XEMO in apparent violation of the terms and conditions of its permit).

⁴Metro reserved the right to reapply for authority under Section 325(c) to provide programming to Station XEMO, when that station’s technical operations are brought to compliance with the U.S.-Mexican Agreement. We note that coordination of Station XEMO’s operations has been completed in compliance with the U.S.-Mexican Agreement.

⁵ *Pacific Spanish Network, Inc.*, 19 FCC Rcd 14427 (Enf. Bur. 2004), *forfeiture ordered*, DA 05-23 (Enf. Bur., Spectrum Enf. Div., 2005).

a statute are unambiguous, judicial inquiry is complete.⁶ The plain language of the Section 325(c) is unambiguous. Section 325(c) only requires a permit for the transmissions of cross-border programming if such transmissions involve the conversion of sound waves into electrical energy or the mechanical or physical reproduction of sound waves. Metro's transmission of information by textual emails clearly did not involve the conversion of sound waves into electrical energy or the mechanical or physical reproduction of sound waves.⁷

9. Based on our plain meaning application of the unambiguous statutory language, we find that Metro's transmission of programming information via textual emails to Station XEMO did not come within the scope of Section 325(c), and thus did not violate the terms and conditions of its Section 325(c) authorization.⁸

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 325(d) of the Act, the investigation of Metro Networks Communications, Inc. **IS TERMINATED**.

11. **IT IS FURTHER ORDERED** that the Petition for Partial Revocation filed by New Inspiration Broadcasting Company, Inc., on December 11, 2003, **IS DISMISSED** as moot.

12. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by first class mail and certified mail return receipt requested to counsel for New Inspiration Broadcasting Company, Inc., Ann Bavender, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209-3801, and to counsel for Metro Networks Communications, Inc., John D. Poutasse, Esq. Leventhal Senter & Lerman PLLC, 2000 K St. NW, Suite 600, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

⁶See *U.S. v. Ron Pair Enterprises*, 489 U.S. 235 (1989); *Rubin v United States*, 449 U.S. 424, 430 (1981).